



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

AUG 17 2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Lieutenant Colonel Jason C. Mackay  
Department of the Army  
Installation Management Command Headquarters  
United States Army Garrison  
Picatinny Arsenal, New Jersey 07806-5000

**RE: Picatinny Arsenal Administrative Order (CAA-02-2015-1009)**

Dear Colonel Mackay:

The United States Environmental Protection Agency (EPA) issues the enclosed Compliance Order to the Department of Defense, US Army, Picatinny Arsenal pursuant to Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413 et seq.

This Order requires Picatinny to conduct a comprehensive performance test at its Explosive Waste Incinerator, in compliance with 40 C.F.R. Subpart EEE. The specific violations are described in the enclosed Compliance Order and future compliance with the CAA is required.

If you have any questions or comments regarding this matter, please contact Anhthu Hoang at (212) 637-5033.

Sincerely,

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

cc: Ms. Richelle Wormley  
Director of Air and Hazardous Waste  
New Jersey Department of Environmental Protection  
Mail Code 401-04N  
401 East State Street  
P.O. Box 420  
Trenton, NJ 08625-0420

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
BEFORE THE ADMINISTRATOR**

In the Matter of:

Department of Defense, US Army  
Picatinny Arsenal  
New Jersey

Respondent

In a proceeding under  
Section 113(a) of the Clean Air Act

**ADMINISTRATIVE  
COMPLIANCE ORDER  
CAA-02-2015-1009**

**ADMINISTRATIVE COMPLIANCE ORDER**

**A. PRELIMINARY STATEMENT**

1. This Administrative Compliance Order ("Order") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 113(a) of the Clean Air Act (the "CAA" or "Act"), 42 U.S.C. Section 7413(a)(3) & (4).
2. On the EPA's behalf, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance ("DECA Director") is delegated the authority to issue this Order under Section 113(a) of the Act.
3. Respondent, Department of Defense, US Army, Picatinny Arsenal ("Picatinny") is a federal facility located at Route 15 North, Rockaway Township, New Jersey. Respondent is a "person" as defined by Section 302(e) of the Act, 42 U.S.C. Section 7602(e).

**B. STATUTORY AND REGULATORY BACKGROUND**

4. Whenever "person" is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

5. Section 113(a)(3) of the CAA authorizes the EPA Administrator to, among other actions, issue compliance orders to any person whenever, on the basis of any information available to EPA, the Administrator finds that such person has violated or is in violation of any requirement or prohibition of Title I of the Act, or of any regulation promulgated pursuant to Section 112 of the Act.
6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the authority to make findings of violation and to issue a CAA Section 113(a) Compliance Order has been delegated to the DECA Director by the EPA Administrator through the Region 2 Regional Administrator.
7. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in Title II) and to assess compliance with, among other requirements, any regulations promulgated under Section 112 of the Act.
8. Pursuant to EPA Delegation of Authority 7-8 and EPA Region 2 Delegation of Authority 7-8, the EPA Administrator's information gathering authority under CAA Section 114 has been delegated to the DECA Director, through the Region 2 Regional Administrator.

**National Emissions Standard for Hazardous Air Pollutants from Hazardous Waste Combustors**

**40 C.F.R. Part 63, Subpart EEE**

9. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants ("HAPs"), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.
10. Emissions standards promulgated pursuant to Section 112 are commonly known as National



Emissions Standards for Hazardous Air Pollutants ("NESHAPs"). NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. Part 63 NESHAPs are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the maximum achievable control technology ("MACT").

11. Section 112(a) of the Act contains definitions relevant to Section 112. More specifically:
  - a. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
  - b. Section 112(a)(2) of the Act defines "area source" as any stationary source of hazardous air pollutants that is not a major source.
  - c. Section 112(a)(3) of the Act defines "stationary source" as any building, structure, facility or installation which emits or may emit any air pollutant.
  - d. Section 112(a)(9) defines "owner or operator" as any person who owns, leases, operates, controls or supervises a stationary source.
12. Pursuant to Section 112 of the Act, EPA promulgated Subpart EEE – the National Emission Standard for Hazardous Air Pollutants from Hazardous Waste Combustors set forth in 40 C.F.R. § 63.1200 *et seq.* ("Hazardous Waste Combustor MACT").
13. 40 C.F.R. § 63.1200(a) provides that the Hazardous Waste Combustor MACT applies to all hazardous waste combustors including hazardous waste incinerators.

14. 40 C.F.R. § 63.1200(a)(1) provides that both area sources and major sources are subject to Subpart EEE.
15. Pursuant to the Definitions at 40 C.F.R. § 63.1201(a), Hazardous Waste Combustor means a hazardous waste incinerator, hazardous waste burning cement kiln, hazardous waste burning lightweight aggregate kiln, hazardous waste liquid fuel boiler or hazardous waste hydrochloric acid production furnace.
16. Pursuant to the Definitions of 40 C.F.R. § 63.1201 (a), Hazardous Waste Incinerator means a device defined as an incinerator in 40 C.F.R. § 260.10 and that burns hazardous waste at any time. For purposes of Subpart EEE, the hazardous waste incinerator includes all associated firing systems and air pollution control devices, as well as the combustion chamber equipment.
17. 40 C.F.R. § 63.1207(b)(1) provides that any person who owns or operates a Hazardous Waste Combustor must conduct a comprehensive performance test to demonstrate compliance with the emission standards provided by Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 63.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.
18. 40 C.F.R. § 63.1207(b)(2) provides that any person who owns or operates a Hazardous Waste Combustor must conduct confirmatory performance tests to: (i) demonstrate compliance with the dioxin/furan emission standard when the source operates under normal operating conditions, and (ii) conduct a performance evaluation of continuous monitoring systems required for compliance assurance with the dioxin/furan emission standards under 40 C.F.R. § 63.1209(k).
19. Pursuant to 40 C.F.R. § 63.1207(c)(3), any person who owns or operates a hazardous waste incinerator must commence the initial comprehensive performance test not later than twelve months after the compliance date.

20. Pursuant to 40 C.F.R. § 63.1206(a)(2)(ii) the date for compliance with 40 C.F.R. § 63.1207 (c)(3) is no later than October 14, 2008, unless the Administrator grants an extension of time under 40 C.F.R § 63.6(i) or 40 C.F.R. § 63.1213.
21. Pursuant to 40 C.F.R. § 63.1207(d), any person who owns or operates a Hazardous Waste Combustor must conduct testing periodically as prescribed in paragraphs (d)(1) through (d)(3) of 40 C.F.R. § 63.1207 . The date of commencement of the initial comprehensive performance test is the basis for establishing the deadline to commence the initial confirmatory performance test and the next comprehensive performance test.
22. Pursuant to 40 C.F.R. § 63.1207(d)(1), any person who owns or operates a Hazardous Waste Combustor must commence comprehensive performance testing no later than 61 months after the date of commencing the previous comprehensive performance test used to show compliance with 40 C.F.R §§ 63.1216 through 63.1221.
23. Pursuant to 40 C.F.R. § 63.1207(d)(2), any person who owns or operates a Hazardous Waste Combustor must commence confirmatory performance testing no later than 31 months after the date of commencing the previous comprehensive performance test used to show compliance with 40 C.F.R. §§ 63.1217 and 63.1219 through 63.1221.
24. 40 C.F.R. Part 63, Subpart A contains the NESHAP General Provisions. Pursuant to 40 C.F.R. § 63.1(a)(4)(i), each relevant standard in Part 63 must identify explicitly whether each provision in Subpart A of Part 63 is or is not included in such relevant standard.
25. Table 1 of 40 C.F.R. Part 63 Subpart EEE provides a list of the General Provisions that are applicable to the Hazardous Waste Combustor MACT, including with 40 C.F.R. §§ 63.7(b) and (c), 63.8(e).



### **C. FINDINGS**

26. Respondent owns and operates a small Explosive Waste Incinerator (EWI) used to demilitarize propellants and explosive (P&E) wastes generated at Respondent's facility located at Route 15N Rockaway Township, New Jersey. This Facility operates under an approved Title V permit issued by New Jersey Department of Environmental Protection (NJDEP):BOP130001 with an expiration date of 3/9/2019.
27. Respondent constructed the EWI in 2005 and conducted an Initial Comprehensive Performance Test on the EWI May 2006. The EWI was subsequently temporarily shut down and restarted in May 2010.
28. According to Respondent's admission in telephone conversations (March 2, 2015 with EPA and representatives of Picatinny including the environmental staff and its consultants), Respondent did not conduct a confirmatory performance test prior to the temporary shut down or a comprehensive performance test upon restart.
29. On November 27, 2013, Respondent requested a waiver from conducting the periodic comprehensive performance test. EPA denied the request in a letter dated March 20, 2014.
30. On June 9, 2014, Respondent re-submitted its request for a waiver, responding to the technical reasons for the March 20, 2014 denial. After several conversations with Respondent, EPA denied Respondent's request for a waiver on April 23, 2015.

### **D. CONCLUSIONS OF LAW**

Based on the Findings set forth above, EPA reaches the following Conclusions of Law:

31. Respondent is a "person" within the meaning of Section 302(e) of the Act.



32. Respondent is subject to the Hazardous Waste Combustor MACT, 40 C.F.R. Part 63 Subpart EEE.
33. Respondent's EWI is a hazardous waste incinerator subject to 40 C.F.R. Part 63 Subpart EEE.
34. Respondent violated 40 C.F.R. § 63.1207(d)(1) by failing to commence at least one comprehensive performance test no later than 61 months after the date of the initial comprehensive performance test.
35. Respondent violated 40 C.F.R. § 63.1207(d)(2) by failing to commence at least one confirmatory performance test no later than 31 months after the date of the initial comprehensive performance test.

#### **E. ORDER**

Consistent with the Findings above, and pursuant to Sections 113(a)(3) and 114 of the CAA, IT IS DETERMINED AND ORDERED that:

##### **I**

The provisions of this Compliance Order shall apply to Respondent and to its officers, agents, servants, employees, successors and to all persons, firms and corporations acting pursuant to, through or for the Respondent.

##### **II**

This Compliance Order will be in effect until the Respondent certifies compliance with 40 C.F.R. § 63 Subpart EEE.

##### **III**

Within 45 days from the date of this Order, Respondent must submit a site-specific test plan, and a Continuous Monitoring System (CMS) performance evaluation test plan in accordance with 40 C.F.R. §§63.7(b) and (c), 63.8(e), and 63.1207(f) to conduct a comprehensive performance test.

#### IV

At least 60 calendar days before the site-specific comprehensive test is scheduled to take place, Respondent must submit a notification to indicate when the test is scheduled to begin. If Respondent does not receive notification as to whether the EPA grants or denies approval of the test plan within nine months of Respondent's submission of the test plan, Respondent is still required to initiate performance testing. See 40 CFR § 63.7(c)(3). Once the performance test plan is approved, Respondent must issue a public notice and make the plan available for public review. See 40 CFR 63.1207(e)(2).

#### V

Within 90 days of EPA's approval of the site-specific test plan, Respondent shall commence the comprehensive performance testing at the EWI.

#### VI

Within 45 days of the completion of the comprehensive performance test, Respondent shall submit the test report to the EPA.

After conducting the comprehensive performance test, Respondent shall comply with Subpart EEE and the required performance tests according the schedule therein.

All documents, reports, and results required by this Order shall be submitted to:

Robert Buettner, Chief  
Air Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 21<sup>st</sup> Floor  
New York, New York 10007-1866

#### F. GENERAL PROVISIONS

36. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Sections

113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(b)(2) and 7413(d)(1), as well as criminal sanctions as provided in Section 113(c) of the Act. 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

37. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
38. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
39. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set out in paragraph 48 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Picatinny. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.
40. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individual specified at the address in Section E unless that individual or his successor gives notice of a change of address to the other party in writing. All notices and submissions shall be considered effective upon receipt.

41. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2 Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2 Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

**G. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

42. Pursuant to Section 113(a)(4) of the Act, Respondent may request a conference with the EPA concerning the violation[s] alleged in this Order to present evidence bearing on the finding of violation, on the nature of the violation, and on any efforts it may have taken or it proposes to take to achieve compliance. Respondent may have legal counsel at the conference.
43. Respondent's request for a conference must be confirmed in writing within ten (10) days of receipt of this Order. If the requested conference is held, this Order shall become effective ten (10) days after the conference is held.
44. If Respondent does not request a meeting within ten (10) days of receipt of this Order, Respondent waives its right to a conference, and this Order shall become effective ten (10) days from its receipt.
45. Any request for a conference, or other inquiries concerning this Order, should be made in writing to:

Anhthu Hoang, Assistant Regional Counsel,  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York 10007-1866  
(212) 637-5033



46. Notwithstanding the effective date of this Order, Respondent must comply with all applicable requirements of the Act.

#### H. JUDICIAL REVIEW

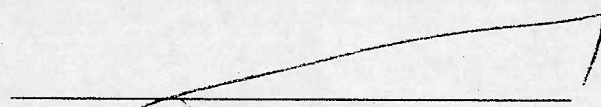
47. Respondent may seek federal judicial review of the Order pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

#### I. TERMINATION

48. This Order shall terminate on the earlier of the following (the "Termination Date") at which point Respondent shall operate in compliance with the Act:
- a. One year after the Effective Date of this Order; or
  - b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
  - c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

For United States Environmental Protection Agency, Region 2

Issued AUGUST 17 2015

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

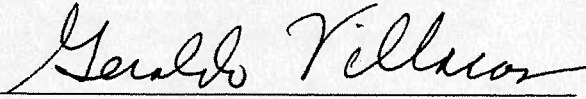
To: Department of the Army  
Installation Management Command Headquarters  
Picatinny Arsenal  
Attn: Lieutenant Colonel Jason C. Mackay  
Route 15 North  
Rockaway Township, NJ 07806

cc: Richelle Wormley, Director of Air and Hazardous Waste  
New Jersey Department of Environmental Protection  
Mail Code 401-04N  
401 East State Street  
P.O. Box 420  
Trenton, NJ 08625-0420

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY THAT ON August 18, 2015, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7015-0640-0007-6347-6633 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):**

**Lieutenant Colonel Jason C. Mackay  
Department of the Army  
Installation Management Command HQ'S  
United States Army Garrison  
Picatinny Arsenal, New Jersey 07806-5000**

  
**Geraldo Villaran**

